

DRAFT**AGREEMENT**

**ABBOTT AVENUE/CALAVERAS BOULEVARD ROAD REPAIR
PROJECT COOPERATIVE AGREEMENT
BETWEEN THE CITY OF MILPITAS
AND THE COUNTY OF SANTA CLARA**

This Cooperative Agreement ("Agreement"), entered into on April 5, 2005, its effective date, is between the CITY OF MILPITAS, a municipal corporation of the State of California, referred to herein as "CITY," and the COUNTY OF SANTA CLARA, a political subdivision of the State of California referred to herein as "COUNTY."

RECITALS

1. The CITY proposes to perform road repairs on Calaveras Boulevard in the area of Abbott Avenue. These repairs consist of removal and replacement of 2" asphalt concrete, localized base repairs, replacement of traffic detector loops, replacement of pavement stripes and markings, referred to herein as the "Calaveras Project."
2. The CITY recommended to the COUNTY that the Calaveras Project be jointly funded, with the COUNTY'S portion, not to exceed \$62,500, to be provided by the 1996 Measure B Transportation Improvement Program. The Santa Clara County Board of Supervisors approved that recommendation on June 4, 2004. The CITY requested that the Calaveras Project be included as part of the CITY'S "Abel/Calaveras Right Turn Project," and the COUNTY agreed.
3. The CITY and COUNTY mutually desire to set forth the terms and conditions of this Agreement to provide for the engineering, administration, construction and financing of the Calaveras Project as part of the CITY'S Abel/Calaveras Right Turn Project.

NOW, THEREFORE, in consideration of the foregoing, the parties agree as follows:

I.

CITY AGREES:

- I.1 To provide 50% of the funding for the Calaveras Project.
- I.2 To provide design drawings, and all clearances for the Calaveras Project.

- I.3 To provide CITY staff for construction management and administration of the Calaveras Project.
- I.4 To complete the Calaveras Project as required by this Agreement by January 31, 2006.

II.

COUNTY AGREES:

- II.1 To provide 50% of the funding for the Calaveras Project, not to exceed \$62,500, from the 1996 Measure B Transportation Improvement Program.
- II.2 To reimburse to the CITY up to the amount of \$62,500 or 50% of costs, whichever is less, as costs are incurred for the construction of the Calaveras Project. Any costs incurred for the Calaveras Project before full execution of this Agreement are not eligible for reimbursement.
- II.3 CITY shall submit invoices to COUNTY on a reimbursement basis with documentation of the Calaveras Project costs incurred during the invoice period. Invoices from CITY shall certify costs submitted are eligible and related to the Calaveras Project.
- II.4 COUNTY shall pay City within thirty days after receipt of each invoice, and continue making such payments until the Calaveras Project is completed or the 1996 Measure B Transportation Improvement Program contribution is fully invoiced, whichever occurs first.

III.

IT IS MUTUALLY AGREED:

- III.1 CITY shall serve as the implementing agency for the Calaveras Project, and upon the effective date of this Agreement, shall meet with COUNTY monthly in order to maintain close coordination and interaction between the two parties throughout the construction.
- III.2 COUNTY reserves the right to inspect the Calaveras Project site, and CITY agrees to schedule and provide site access within a reasonable time throughout construction up to 180 days from its completion date.
- III.3 The design and construction of the Calaveras Project shall comply with all CITY and state specifications and requirements applicable to the engineering and construction of improvements such as those to be undertaken in the Calaveras Project.

- III.4 COUNTY reserves the right to audit the expenses incurred in the performance of this Agreement. CITY shall retain all records related to the Calaveras Project for three years after its completion. During this period, CITY shall make these records available within a reasonable time to the COUNTY for inspection upon request.
- III.5 The COUNTY'S Measure B Administrator or his designee shall be its representative for all purposes under this Agreement.
- III.6 The CITY'S Engineer or her/his designee shall be its representative for all purposes under this Agreement.
- III.7 Pursuant to Government Code Section 895.4, each of the parties hereto shall fully indemnify, defend and hold the other party, its officers, employees and agents, harmless from any damage or liability imposed for injury (as defined in Government Code Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying party, its officers, employees or agents, under or in connection with any work, authority or jurisdiction delegated to such party under this Agreement. Neither party, nor any of its officers, employees or agents shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of the other party hereto, its officers, employees or agents, under or in connection with any work, authority or jurisdiction delegated to such other party under this Agreement.
- III.8 The failure of either party to insist upon the strict performance of any of the terms, covenants and conditions of this Agreement shall not be deemed a waiver of any right or remedy that either party may have, and shall not be deemed a waiver of their right to require strict performance of all of the terms, covenants, and conditions thereafter.
- III.9 Any notice required to be given by either party, or which either party may wish to give, shall be in writing and served either by personal delivery or sent by certified or registered mail, postage prepaid, addressed as follows:

To COUNTY: County of Santa Clara
Jeff Davis
Administrator, Measure B
70 West Hedding, East Wing, 11th Floor
San Jose, CA 95110

To CITY: City of Milpitas
Greg Armendariz
City Engineer
455 E. Calaveras Boulevard
Milpitas, CA 95035

- III.9 If a question arises regarding interpretation of this Agreement or its performance, or the alleged failure of a party to perform, the party raising the question or making the allegation shall give written notice thereof to the other party. The parties shall promptly meet in an effort to resolve the issues. If the parties fail to resolve the issues, alternative forms of dispute resolution, including mediation or binding arbitration, may be pursued by mutual agreement; however, there shall be no duty on either party to participate in mediation or arbitration.

IV.

ENTIRE AGREEMENT, AMENDMENTS AND TERM

- IV.1 This Agreement constitutes the entire Agreement between the parties pertaining to the subject matter contained therein and supersedes all prior or contemporaneous agreements, representations and understandings.
- IV.2 Future amendments to this Agreement shall be processed by mutual agreement of the parties. Mutual consent shall be reached through negotiations. Notice to amend this Agreement shall be provided ninety calendar days prior to the desired effective date of such amendment.
- IV.3 This Agreement shall be effective on the effective date and shall continue until the terms and conditions of this Agreement have been satisfied. Following the expiration of the term, or earlier termination, this Agreement shall be deemed of no further force and effect, except as to those provisions expressly designated herein to survive expiration or earlier termination.

CITY

City of Milpitas
a municipal corporation

By: _____
Charles Lawson
Interim City Manager

APPROVED AS TO FORM:

By: _____
Steven T. Mattas
City Attorney

APPROVED AS TO CONTENT:

By: _____
Greg Armendariz
City Engineer

COUNTY

County of Santa Clara
a political subdivision of the state

By: _____
Liz Kniss
Chair
Board of Supervisors

ATTEST:

By: _____
Phyllis Perez, Clerk
Board of Supervisors

APPROVED AS TO FORM:

By: _____
Linda Deacon
Deputy County Counsel

City of Milpitas, California

Budget # _____
Refer # _____

BUDGET CHANGE FORM

Type of Change	From		To	
	Account	Amount	Account	Amount
Check one: <input checked="" type="checkbox"/> Budget Appropriation <input type="checkbox"/> Budget Transfer	311-9514170153575	\$62,500	311-951417074800	\$62,500

Explain the reason for the budget change:

On July 6, 2004, the Council authorized the City Manager to execute a cost sharing agreement with Valley Transportation Authority (VTA) for VTA to provide \$62,500 as it's share for this pavement work between I-880 and Abbott Avenue. Since these funds are actually coming from County Measure B, a new cost sharing agreement with the County of Santa Clara is now necessary. A new cost sharing agreement is proposed with the County of Santa Clara with a not-to-exceed County share of \$62,500.

The City Council awarded Capital Improvement Project 4186 Right Turn Lane at Abel Street and Calaveras Blvd. project to OC Jones and Sons on November 16, 2004. The completed project will provide an additional right turn lane from northbound Abel Street to eastbound Calaveras Boulevard. The anticipated completion date is May 2005. The construction is underway and is close proximity to the pavement work proposed above.

Staff recommends that additional pavement work between I-880 and Abbott Avenue be included in this project. Staff has negotiated a fee not to exceed \$146,524.25 with the Contractor for this additional work, and the approval of a contract change order is proposed. The total anticipated total cost of the work, including City administration, inspection, and material testing, is \$168,524 and is available from Project 4170.

Approve an appropriation of \$62,500 from the County to Hwy 237/I-880 Interchange CIP 4170 for the County's share of the pavement work between I-880 and Abbott Avenue.

☒ Check if City Council Approval required.

Meeting Date: April 5, 2005

Itemization of funds, if needed:			Amount
Requested by:	Division Head:	Date:	
	Department Head: <i>Danilo J. Acuna</i>	Date: 7/26/05	
Reviewed by:	Finance Director: <i>Tom C. Kerk</i>	Date: 5/28/05	
Approved by:	City Manager:	Date:	
Date approved by City Council, if required:		Confirmed by:	



ENGINEERING/DESIGN & CONSTRUCTION
455 East Calaveras Blvd.
MILPITAS, CA 95035

CONTRACT CHANGE ORDER

To: O.C. Jones & Sons, Inc.
1520 Fourth Street
Berkeley, Ca. 94064

DRAFT

Date: February 16, 2005

Project: Abel/Calaveras Right Turn Lane, Project 4186

Purchase Order No. C418611

Amount: \$146,524.25

Account No. C4186-7-4237

Council Approval:

Contract Change Order No. 1

You are hereby authorized to proceed with the following work in connection with Abel/Calaveras Right Turn Lane, Project 4186.

DESCRIPTION
RFQ No. 1

Furnish all labor, material, and equipment to perform AC overlay work at the intersections of Calaveras Boulevard and Abbott Avenue. This work will include

Description	Quantity	Unit Price	Bid Total
2" Full Width Grind and Replace	750 Tons	\$95.00	\$71,250.00
Base Repair 6"	2250 SF	\$12.00	\$27,000.00
Traffic Loops-Type A	57 Each	\$540.00	\$30,780.00
Traffic Loops-Type D	3 Each	\$540.00	\$1,620.00
Crosswalk limit line	560 LF	\$3.25	\$1,820.00
Pavement Arrows Type 2	2 Each	\$220.00	\$440.00
Pavement Arrows Type 3	6 Each	\$220.00	\$1,320.00
Paint Median Island nose White	1 LS	\$540.00	\$540.00
Detail 8-Per RFQ 1 plan dated 1-12-05	350 LF	\$1.35	\$472.50
Detail 10-Per RFQ 1 plan dated 1-12-05	1100 LF	\$2.15	\$2,365.00
Detail 25A-Per RFQ 1 plan dated 1-12-05	660 LF	\$1.75	\$1,155.00
Detail 29-Per RFQ 1 plan dated 1-12-05	100 LF	\$3.25	\$325.00
Detail 37B-Per RFQ 1 plan dated 1-12-05	15 LF	\$3.25	\$48.75
Detail 38-Per RFQ 1 plan dated 1-12-05	700 LF	\$3.50	\$2,450.00

Description	Quantity	Unit Price	Bid Total
Hatch Line 3" on center	40 LF	\$3.25	\$130.00
Caltrans Encroachment Permit Fees	1 LS	\$1,200.00	\$1,200.00
Caltrans Inspection Fees	44 hours	\$82.00/hour	\$3,608.00
			\$146,524.25

This work will be performed for the Total Lump Sum of One hundred forty six thousand five hundred twenty four and 25/100 (\$146,524.25)

TOTAL ADD: \$146,524.25

Increase in Contract Time: ☐ working days

No claims for additional compensation or damages for delay under any theory whatsoever, submitted by the contractor or any subcontractor, will be allowed by the City for any delay arising from, or associated with this change order. The extension of the time for completion and the compensation specified in this change order shall be the contractor's sole remedy.

This change order constitutes full and complete compensation for all labor, equipment, materials, overhead, extended overhead and profit required to perform the changes described above in accordance with the applicable provisions of the contract documents. This change order is not effective until approved by owner.

Accepted By:

Date

Approved By:

Date


Peter H. Patrick
Project Manager


Greg Armendariz
City Engineer